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FEDERAL COMMUNICATIONS COMMISSION
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June 25, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S. W. -- Room TWB-204
Washington, D. C. 20554

EX PARTE OR LATE FILED

Re: *Ex Parte*, CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability; CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

Dear Ms. Roman Salas:

On Friday, June 22, 2001, Teresa Marrero and the undersigned met with Deena Shetler, Legal Advisor to Commissioner Gloria Tristani. The purpose of the meeting was to discuss various approaches through which the Commission may require CLEC-to-CLEC cross connects in incumbent LEC central office facilities. The attached presentation describes the topics covered in the meeting.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

ATTACHMENT

cc: D. Shetler

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Collocation of CLEC-to-CLEC Cross-Connects

Presentation to the FCC
June 22, 2001

The Act Requires that ILECs Permit Physical Collocation of CLEC-to-CLEC Cross Connects

Section 251(c)(6) provides that ILECs have:

> "The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment *necessary for interconnection or access to unbundled network elements* at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."

The Act Requires that ILECs Permit Physical Collocation of CLEC-To-CLEC Cross Connects (cont.)

CLEC-to-CLEC cross connects are unquestionably necessary for "access to unbundled network elements" in the context of line splitting.

Without the ability to cross connect in central offices:

- CLECs would need to extend copper lines out of the central office and connect elsewhere.

- Line Spitting would be prohibitively expensive.

CLEC-to-CLEC cross connects are necessary to permit CLECs purchasing UNE loops to choose among a variety of transport providers.

D.C. Circuit Remand

Court did *not* hold that Section 251(c)(6) precludes CLECs from self-provisioning cross-connects.

Court merely held that "[t]he Collocation Order *as presently written* seems overly broad and disconnected from the statutory purpose enunciated in Section 251(c)(6)."

Court expressly held that "any search for 'plain meaning' in the statute is fruitless"; therefore the Commission's construction of the Act is entitled to deference.

Court decision only precluded the re-adoption of the Commission's original "used and useful" standard.

Under a Properly Limited Test, Cross Connects Are Necessary for Interconnection and Access to UNEs

ILECs should be required to permit cross connects as a 'just, reasonable and nondiscriminatory" term of collocation.

- Allowing an ILEC to deny cross connects would discriminate against CLECs because only the ILEC could connect to all other LECs within the central office.

- Statutory term "nondiscriminatory" means nondiscriminatory as between ILEC and the CLEC. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers.* 11 FCC Rcd. 15499. ¶ 218 (1996).

- The ILEC can easily accommodate cross connects with virtually no disruption of the central office.

Therefore, it is unreasonable for the ILEC to deny CLECs the ability to cross connect in the central office as a term of collocation.

Sections 251(b)(4) and 224(f) Provide an Independent Basis for Requiring ILECs to Permit Cross Connects.

Section 224(f)(1) Rights of Way Requirement states:

> A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

Commission has found that "'right-of-way' within buildings means, at a minimum, *defined pathways* that are being used or have been specifically identified for use as part of a utility's transmission and distribution network." *Promotion of Competitive Networks in Local Telecommunications Markets* WT 99-217, FCC 00-336, ¶ 82 rel. Oct. 25, 2000.

Sections 251(b)(4) and 224(f) Provide an Independent Basis for Requiring ILECs to Permit Cross Connects (cont.)

Commission concluded that the obligations of utilities under Section 224 encompass in-building facilities, such as riser conduits, that are owned or controlled by a utility. *Id.* ¶ 80.

CLECs use well-defined and pre-existing cable racks, floor penetrations, and other "defined pathways" in the central office that are already part of the ILEC's "transmission and distribution network".

ILEC Provisioning of Cross Connects as a Special Access Service Is an Inadequate Substitute for Physical Collocation

Provisioning cross connects via special access:

gives ILECs full control over the implementation of terms and conditions under which cross connects will be provided;

does not guarantee that cross connects will be provided at cost-based rates because there is no TELRIC obligation imposed under the access service tariffs.

ILECs may change any of the terms and conditions of special access at any time simply by modifying its access tariff.

Special access pricing is further deregulated under the new Phase I and Phase II triggers which forebear ILECs from price cap regulation if certain collocation triggers are met.